IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5207 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

H B RAVAL

Versus

MOHMED YUSUF KHUBMIYAN SAIYED(M.K.SAIYED)

Appearance:

1. Criminal Misc.Application No. 5207 of 2004
BY POST for Petitioner No. 1
RULE SERVED for Respondent No. 1
Mr.S.P.Hasurkar, learned Addl.P.P. for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 09/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. The learned District And Sessions Judge, Palanpur under his letter dated 3.3.2004 has forwarded the confidential report of Joint Civil Judge (JD) and JMFC, Deesa dated 16.2.2004 for initiating steps against the respondent for criminal contempt and accordingly while forwarding the said Reference, the learned trial Judge has annexed various documents, namely, the judgment and order recorded by him against the respondent by which the respondent was convicted for the offence under Section 500 of the I.P.C. and imposed S.I. for 2 years and fine of Rs.2000 and in default of payment of fine, the accused has to further undergo S.I. for 3 months. The respondent accused is the Editor of daily "The Message" published from Palanpur. The learned trial Judge has also annexed the letter of the Addl. Sessions Judge dated 23.1.2004 addressed to the Judicial Magistrate, First Class by which the respondent accused has preferred Appeal and challenged the order of the learned trial Judge passed in Criminal Case No.2712 of 2001 and the Appeal filed by the said accused being Criminal Appeal No.4 of 2004 was admitted and the appellate court has granted stay of the order of conviction and sentence while admitting the Appeal and released the accused on bail by imposing certain conditions and the notice issued by the learned J.M.F.C. to the respondent under the provisions of the Contempt of Courts Act as per the Circular of the High Court and the reply submitted by the respondent to the said notice dated 11.2.2004.

2. On considering the reference as per order dated 12.7.2004 this Court has issued Rule, which was made returnable on 9.8.2004 and accordingly after the service of rule to the respondent, Mr.M.K.Saiyed appeared in person. As this being a Reference under the Contempt of Courts Act we tried to inquire from the respondent that whether he is intending to engage any advocate to represent him for which the court can consider for giving time. However, the respondent in term has requested us that he knows the entire case and he intends to represent his case in person and accordingly by the consent of the learned Addl.P.P. with the respondent we have heard the matter today.

3. We have heard Mr.Hasurkar, the learned Addl.P.P., who in turn has taken us through the contempt petition and the documents attached thereto, including the daily news paper "The Message" dated 31.1.2004 in which the

contemner has published the report. As transpired from the judgment and order of conviction and sentence recorded by the learned Magistrate while disposing of Criminal Case No.2712 of 2001 against the respondent for the offence under Section 500 of the I.P.C., the learned trial Judge has on considering the evidence led before him and in light of the defence accepted the complaint filed by Smt. Nurjahaben Nurmohmad Ami against the respondent and thereby convicted the accused for the offence under Section 500 of the I.P.C. and the learned trial Judge has also imposed sentence, which we have already referred to earlier. It is also to be noted that the respondent contemner has already preferred Appeal before the learned Addl. Sessions Judge, Banaskantha at Deesa challenging the said order of conviction and sentence recorded by the learned Magistrate and his Appeal being Criminal Appeal No.4 of 2004 is pending for final hearing in which the appellate court has released the respondent contemner on bail on certain conditions and accordingly we are not required to deal with the facts in which the learned trial Magistrate has convicted the accused and further that the Appeal filed by the respondent contemner is pending before the appellate court and the same will be dealt with by the appellate court while considering the order of conviction and sentence on appreciating the evidence and contentions raised before him. However, in the present case, the article was published in the daily news paper "The Message" in which the respondent is working as an Editor and the news paper dated 31.1.2004 has made allegation against the Judicial Officer and by publishing such news item in his news paper, it tantamount to lowering down the authority and image of the Court. We have seen the said article published in the said news paper which is at Annexure "C" to this petition. The said article is published in the front page of the said news paper and by publishing such item as per the Reference the same is against the Judicial Officer and accordingly while sending the reference according to the Magistrate the contemner has committed criminal contempt as per Section 2(c) of the Contempt of Courts Act,1971 and accordingly the Reference under Section 10 of the Contempt of Courts Act, 1971 is made.

4 Mr.Hasurkar, learned Addl.P.P., has while taking us through the documents attached to this petition vehemently urged that by publication of such news article in the daily news paper "Message" the respondent No.1 as an Editor has lowered down the image of the judicial officers and further that he has published such articles/news when he was convicted by the learned

Magistrate for the offence under Section 500 of the I.P.C. on 30.12.2003 and the respondent No.1 has clearly committed contempt covered under Section 2(c) of the Contempt of Courts Act, 1971. He has placed reliance upon the decisions, which were referred to by the learned Magistrate while sending this Reference, i.e. State of Gujarat v. (Mr.) S.O.Trivedi, reported in 1993 (2) GLH 514, the decision in the matter of Rajasthan High Court v/s. Dhiraj Kulshrestra and others, reported in 1994(3) Crime page 583 and in the matter of State of Gujarat and another v/s. Pravinkumar Samjibhai Patel and others, reported in 1996(2) GLR 764 and the decision in the matter of In Re: v/s. Ajay Kumar Pandey, reported in 1999(1) GLH 103.

5. Mr.Saiyed contemner has tried to justify his action as according to him that he has made representation to the learned Chief Justice of this court and annexed various documents as back as on 7.8.2002 and the said complaint was in the form of public interest complaint. Copy of the said representation was also given to learned District & Sessions Judge at Palanpur and when his complaint is pending and he has not received any communication either from the High Court or from the Sessions Court, according to him that in the form of representation, complaint was submitted against the Magistrate and he tried to justify his action of publishing of article in the news paper "The Message" in which he is working as an Editor. He has also submitted that against the conviction recorded by the learned Magistrate convicting him for the offence under Section 500 of the I.P.C., he has already filed Appeal before the appellate court and the said Appeal is pending. He has also taken us through the application submitted in the said proceedings being Application Exh.18 in which he has requested to permit him to cross examine the complainant and the said application was rejected by the learned Magistrate on 2.8.2002. He in short contended before us that against the rejection of the said application, he has also preferred Revision Application. We have perused the order passed by the learned Addl.Sessions Judge, Banaskantha at Deesa dated 18.9.2002 in Criminal Revision Application No.24 of 2002.

6. As observed earlier, we are not expressing anything in respect of the order of conviction recorded by the learned Magistrate against the contemner Shri Saiyed as he has challenged the said order by preferring Appeal and the said Appeal is pending before the appellate court. During hearing of this application the respondent contemner has realised that by publishing such

article in the news paper it tantamount to lowering down the image of the judiciary and accordingly he realised his mistake by publishing such article. He in term submitted that as a responsible person being an Editor of the news paper "The Message" he ought not to have published such article in his news paper and he accordingly tenders unconditional apology for which he requested us that he will file his affidavit tendering unconditional apology and accordingly we have kept the matter in the second sitting. The contemner has tendered unconditional apology and had undertaken that in future he will not act in this fashion by publishing any article in his news paper which effect the image of the court and the judicial officer. When the matter was called out in the second sitting, the contemner is present and he has tendered affidavit. Copy of the affidavit is duly served to Mr.Hasurkar, learned Addl.P.P. We have perused the affidavit. As transpired from his affidavit that he has tendered unconditional apology. He is also repenting for such publication and he also realised that he ought not to have published such article in his news paper. He accordingly tendered unconditional apology and assures this court that hence forth he will not publish any article in his news paper which tantamount of lowering down the image of the judiciary and he prays that the unconditional apology tendered by him be accepted and requested for dropping the contempt proceedings. We have heard Mr.Hasurkar in light of the unconditional apology tendered by contemner Shri Saiyed. Considering these facts, according to us that publication of such item in the news paper against the judicial officer is not proper and it amounts to contempt. At the same time when the respondent contemner has realised his mistake and has tendered unconditional apology and also assured this court that he will not repeat such mistake in future and accordingly we accept the unconditional apology tendered by the respondent contemner and we direct the respondent contemner that he shall publish his affidavit filed in this proceedings in the daily news paper "The Message" where he is working as an Editor published from Palanpur in the front page in the bold letter within one week from today and the copy of such publication be tendered in this proceedings hereafter. Rule is accordingly disposed off in the above terms.

(D.K.Trivedi,J)

(K.M.Mehta,J)

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